

Search Warrants

Judge William G. Kelly

62-B District Court

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The Favorite Part of Our Job

- It's 12:30 a.m.
- Search Warrant Request
- "On or about 11:40 p.m. Robert Leonard Sloan operating a vehicle in the City of Southgate in the area of Pennsylvania & Walter. Collision occurred & appears Robert Leonard Sloan under influence of intoxicating liquor, transported to Wyandotte Hospital & Medical Center. Request blood sample be taken. Robert Leonard Sloan involved in accident causing death."

Results

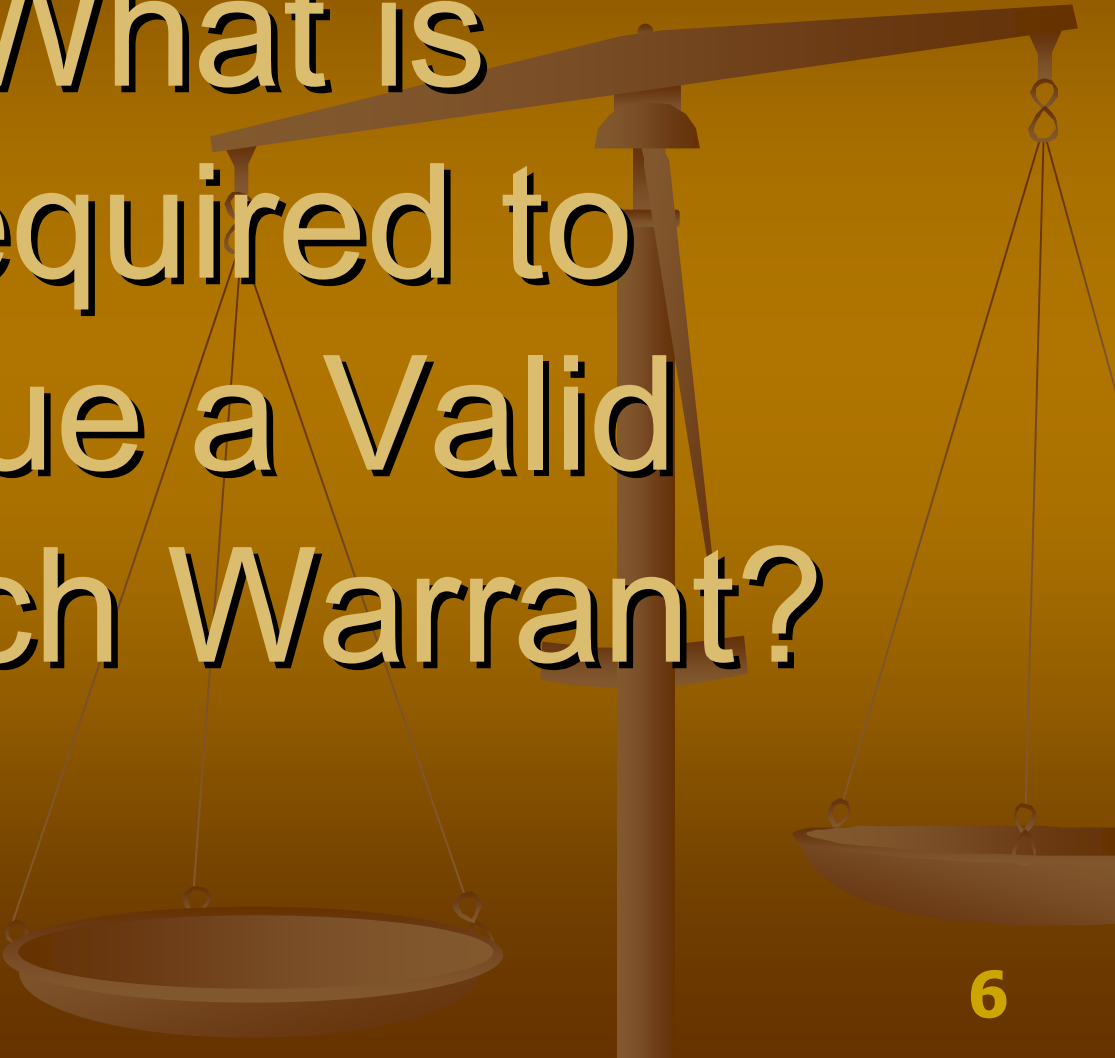
- .30%
- Defendant charged with OUIL causing death, felonious driving, and manslaughter with a motor vehicle
- Magistrate's loss of sleep is worthwhile because blood test can be used in this case of OUIL causing death.

Was the Search Warrant Valid?

- "On or about 11:40 p.m. Robert Leonard Sloan operating a vehicle in the City of Southgate in the area of Pennsylvania & Walter. Collision occurred & appears Robert Leonard Sloan under influence of intoxicating liquor, transported to Wyandotte Hospital & Medical Center. Request blood sample be taken. Robert Leonard Sloan involved in accident causing death."
- Affidavit was conclusions, not facts

Was the Search Warrant Valid?

- Unrecorded sworn statements could not be used at the hearing
- Results of blood test are inadmissible
- Prosecutor had to proceed without the blood test results.
- *People v. Sloan* 450 Mich. 160, 538 N.W.2d 380 (1995)



What is Required to Issue a Valid Search Warrant?

Objectives

- At the end of this seminar, you will be able to determine whether a proposed search warrant meets all constitutional, statutory, and procedural requirements for the issuance of a valid search warrant.
- This is not a seminar to focus on when the government can make a warrantless search.

Agenda

- Review Constitutional Requirements
- Review Search Warrant Statutes MCL § 780.651; MSA § 28.1259(1) et seq.
- Review case law
- Checklist
- Open to Questions
 - Live
 - Chat session

Serious Business

- Execution of search warrant
- Flashlight mark on man's forehead.
- Police officers have been killed in the execution of search warrant.
- Wrong houses have been searched.
- Talking about breaking into people's homes and bodies.
- Search warrant can be contested for constitutional violations.

4th Amendment to the US Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Michigan Constitution Art 1 Sec 11

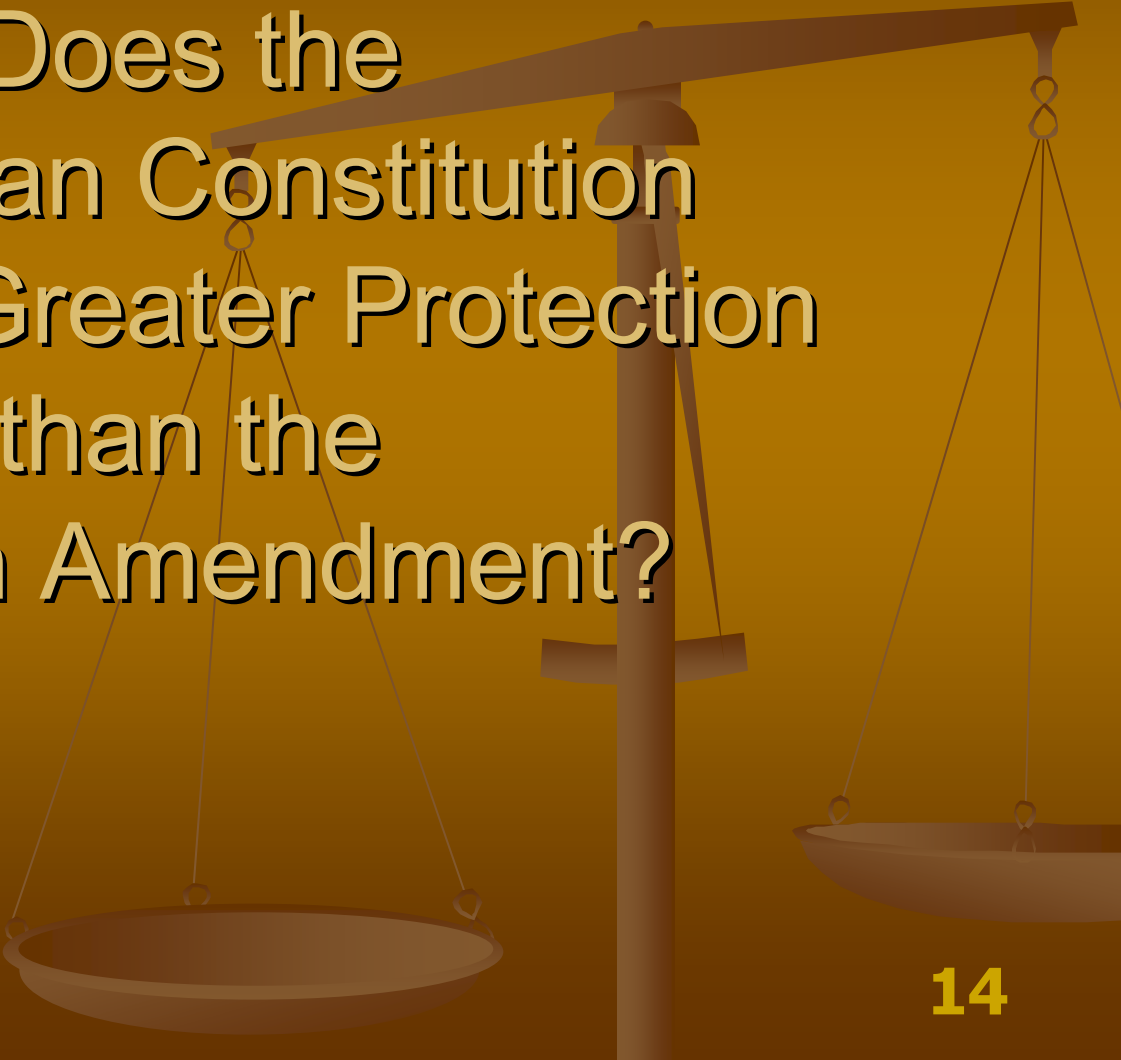
Sec. 11. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

Constitutional Requirements

- No unreasonable searches
- Persons, houses, papers, and possessions are secure
- Search warrants may be issued
 - Probable cause required
 - Under oath
 - Particular description of place to be searched
 - Particular description of property to be seized

Hot Topic in Michigan Supreme Court

- *People v Borchard-Ruhland* 460 Mich 278, 597 NW 2d 1 (1999)
- *People v Stevens* 460 Mich 626, 597 NW2d 53 (1999)
- *People v Levine* 461 Mich. 172, 600 NW 2d 622 (1999)
- *People v Whitfield* 461 Mich. 441, 607 N.W.2d 61 (2000)
- *People v Custer* 465 Mich 319, 630 NW2d 870 (2001)
- *People v Sobczak-Obetts* 463 Mich 687, 625 NW 2d 764 (2001).
- *People v Hawkins* 468 Mich 488, ____ NW2d ____ (2003).



Does the
Michigan Constitution
Provide Greater Protection
than the
Fourth Amendment?

Michigan Constitution Does Not Provide Greater Protection than the Fourth Amendment

- *People v Custer* 465 Mich 319, 630 NW2d 870 (2001)

What is
the
Curtilage?



State Constitution Does Not Apply Outside Of The Curtilage Of A Dwelling House

- The land or yard adjoining a house, usually within an enclosure.
- Curtilage is an area usually protected from warrantless searches.
- Open fields are not within the curtilage.
- House, garage, shed, garden around the house, lawn would be within the curtilage.

What is a Reasonable Search?



Reasonable Searches

- Search pursuant to a valid search warrant
- Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions. *People v Borchard-Ruhland* 460 Mich 278, 597 NW 2d 1 (1999); *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

Strong Preference for a Search Warrant

- *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)
- *People v Whitfield*, 461 Mich. 441, 607 N.W.2d 61 (2000)

Ten Exceptions to Search Warrant

1. Search incident to a lawful arrest
2. Plain view
3. Administrative searches of regulated industries
4. Consent
5. Exigent Circumstances
6. Search of the interior of an automobile
7. Hot pursuit
8. Inventory search
9. Pat down
10. Border searches

What is a Search?

- ✓ Search occurs only when the government invades an individual's reasonable expectation of privacy.
- ✓ A reasonable expectation of privacy exists only if
 - An individual actually expects privacy and
 - His/her expectation is reasonable.
- ✓ *Katz v United States* 398 US 347 (1967)

Is There a Reasonable Expectation of Privacy?

The fire department has put out the fire and left the premises and the arson investigator wants to examine the source of the fire?

Persons, Places, Papers and Possessions are Secure

A search warrant is required for the fire department to reenter premises after the blaze has been extinguished and the fire fighters have left. *People v. Tyler* 399 Mich 564, 250 NW2d 467 (1977) affirmed 436 US 499.

Is There a Reasonable Expectation of Privacy?

- Is there a reasonable expectation that the person one is speaking to on a telephone is not recording the conversation?
- Is a search warrant required if an informant records his telephone conversations with a suspect?

Persons, Places, Papers, and Possessions are Secure

A search warrant is not required for a participant to record a telephone conversation. *People v Collins* 438 Mich. 8, 475 N.W.2d 684 (1991) overruling *People v Beavers* 393 Mich 554, 227 NW 2d 511 (1975).

Who Can Issue a Search Warrant?

- District Judge's Authority
- Sec. 8511. A district court magistrate shall have the following jurisdiction and duties:
 - (f) To issue search warrants, when authorized to do so by a district court judge.

Who Can Issue a Search Warrant?

Can the judge give blanket authority to a magistrate to issue search warrants or must the judge give specific authorization for each search warrant?

Who Can Issue a Search Warrant?

Blanket authority may be given.
People v. Paul 203 MA 55, 512
NW2d 20 (1993).

Who Can Issue a Search Warrant?

- (1) When an affidavit is made on oath to a magistrate authorized to issue warrants in criminal cases, and the affidavit establishes grounds for issuing a warrant pursuant to this act, the magistrate, if he or she is satisfied that there is probable cause for the search, shall issue a warrant to search the house, building, or other location or place where the property or thing to be searched for and seized is situated. MCL § 780.651(1); MSA § 28.1259(1).

Who Can Issue a Search Warrant?

Magistrate must be
neutral and detached.

Who Can Issue a Search Warrant?

***Can a Magistrate serve as
magistrate, deputy court
administrator, court officer,
and deputy sheriff and sign
a search warrant?***

Magistrate Must Be Neutral and Detached

Magistrate who is court officer and sworn deputy cannot issue search warrants. *People v Payne* 424 Mich 475 (1986)

Can This Magistrate Issue a Warrant?

1. The Magistrate while he was Assistant Prosecuting Attorney, had previously prosecuted the defendant on other charges.
2. The Magistrate, although the complaint and warrant was asserted to be on information and belief, was actually personally acquainted with the complaining witness and had been in an adverse position to him on previous occasions.

Can This Magistrate Issue a Warrant?

3. The Magistrate was the appointee of a three judge court where each of the three judges of that court had disqualified herself or himself because of pending litigation between the defendant and the judges and public figures of the community.
4. The Magistrate had been the defendant in a suit brought by defendant against the magistrate and others in the amount of ten million dollars.

Magistrate Must Be Neutral and Detached

Magistrate who had previously prosecuted defendant and had been sued by defendant was not neutral and detached officer to sign an arrest warrant. *People v Lowenstein* 188 Mich App 486 (1982)

Use of Hearsay

- Unnamed informants
- Named Informants

Unnamed informants

- In *Aguilar v Texas*, two Houston police officers applied for, and obtained, a search warrant upon the basis of informant-supplied information.
- The informant was identified only as a "credible person," a conclusion that was unsupported by any other allegation or assertion of fact.
- The balance of the affidavit consisted of conclusory statements that the informant had supplied "reliable information" and that the affiants believed that specified drugs were in a particular location. *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509 (1964)

Unnamed Informants

FBI had been informed by a confidential informant that William Spinelli is operating a handbook and accepting wagers and disseminating wagering information by means of telephones.

Unnamed Informants

The tip did not contain a sufficient statement of the underlying circumstances from which the informer spoke with personal knowledge. *Spinelli v United States* 394 US 410, 89 S. Ct. 584, 21 L. Ed 2d 637 (1969).

Unnamed Informants

- Aguilar-Spinelli two pronged test
- Affirmative allegations from which magistrate may conclude that
 1. the person spoke with personal knowledge of the information and
 2. either
 - unnamed person is credible or
 - that the information is reliable.

Probable Cause: Use of Hearsay

The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

(a) If the person is named, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information.

Probable Cause: Use of Hearsay

(b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

MCL 780.653 M.S.A. § 28.1259(3).

Named Informant

Affirmative allegations from which magistrate may conclude that

- the person spoke with personal knowledge of the information.

Unnamed Informant

Affirmative allegations from which magistrate may conclude that

- the person spoke with personal knowledge of the information and
- either
 - unnamed person is credible or
 - that the information is reliable.

Named Informants

- What if Affidavit Does Not Say that Affiant Got Information from the Victim?
- Complainant, a prostitute, is named
- The affiant furnished specific details of three counts of first-degree criminal sexual conduct, as well as explicit details of the crime--for example, the presence of semen on defendant's cranberry-colored robe and the bed.

Named Informants

The affiant also described the location of items of physical evidence that the complainant and the defendant had touched.

Named Informant, Credibility

Identified citizens and police officers are presumptively reliable for purposes of information supporting issuance of search warrant.

People v. Powell 201 Mich App 516, 506 NW2d 894 (1993).

Named Informant: The Person Spoke With Personal Knowledge Of The Information

Affidavit was sufficiently reliable although it did not state that the victim was the source of information but a commonsense reading of affidavit established that the named victim was the actual source and victim's reliability was proven by self-authenticating details of crime. *People v. Powell* 201 Mich App 516, 506 NW 2d 894 (1993).

Unnamed Informants

An anonymous letter writer had informed the police that the defendants, a married couple from Illinois, were selling drugs. The letter explained that the wife would drive their car to Florida on a certain date to pick up drugs, and the husband would fly down a few days later to drive the car back to Illinois. The letter also stated that the defendants had more than \$100,000 worth of drugs in their basement.

Unnamed Informants

Police verified the defendants' address and learned that the husband had reserved a seat on a flight to Florida. A subsequent surveillance confirmed that the husband stayed overnight in a Florida motel room that was registered in his wife's name, and departed with a woman the next morning, traveling northbound on an interstate highway in a car bearing Illinois plates and registered to him.

Unnamed Informants

- In *Illinois v. Gates*, 462 U.S. 213 (1983), the United States Supreme Court overruled its decisions in *Aguilar v. Texas*, 378 U.S. 108 (1964), and *Spinelli v. United States*, 393 U.S. 410 (1969).

Unnamed Informants

- The *Gates* Court rejected this two-pronged approach and returned to a totality-of-circumstances test, finding that "basis of knowledge," "reliability," and "credibility" were all relevant factors and that a deficiency in one factor could be compensated for by a sufficient showing in another.
- Totality of the circumstances.

Unnamed Informants

- In *People v. Sherbine*, 421 Mich. 502, 364 N.W.2d 658 (1984), the Michigan Supreme Court declined to reach the issue of whether it would follow *Gates* or retain *Aguilar-Spinelli*. Instead, the Court found that it had to follow M.C.L. § 780.653; M.S.A. § 28.1259(3).

Unnamed Informants

- Officer Shelly Turner began a surveillance of a residence on Clubhouse Lane in Farmington Hills. The undercover officer had advised her that several persons and a large quantity of marijuana would be present at the site that night. She was aware that the officer had received this tip from someone else, but she did not know the identity of the informant.

Unnamed Informants

- Officer Turner had been a police officer for seven and a half years, and had spent four of those years on the surveillance and narcotics team. She had additional training with the Drug Enforcement Agency and at several schools.

Unnamed Informants

- Drawing on her experience and training, Officer Turner testified that the comings and goings of vehicles on Clubhouse Lane at a late hour on a Wednesday night, with the occupants staying only a short period, was consistent with drug trafficking. The departure of one man wearing dark clothing and carrying a black bag, which he put in the trunk of his vehicle, also comported with her prior experience and with the undercover officer's tip that two persons would leave the house with marijuana for later distribution.

Unnamed Informants

- In addition, Officer Turner had verified through official records the addresses and names provided by the undercover police officer. She determined that the defendant--one of those identified as involved in the anticipated drug transaction--had been mentioned in past investigations of marijuana dealing.
- Moreover, before asking Officer Farley to stop the defendant's car, Officer Turner had verified that the vehicle was registered to someone who either had the same last name as the defendant or lived at the same address.

Unnamed Informant

- Does this meet the two-pronged test?
- Affirmative allegations from which magistrate may conclude that
 - the person spoke with personal knowledge of the information and
 - either
 - unnamed person is credible or
 - that the information is reliable.

Unnamed Informants

Under the totality of the circumstances, the information provided by the undercover police officer was sufficiently corroborated and supplemented by Officer Turner's own investigation to warrant a finding of probable cause, i.e, a fair probability that contraband or evidence of a crime will be found in a particular place. *People v Levine* 461 Mich. 172, 600 NW 2d 622 (1999)

Unnamed Informants

- Violations of Constitution and Statutes
- What if MCL 780.653(b) is not complied with because it did not include information concerning the credibility of the unnamed informants or the reliability of the information they supplied?

Unnamed Informants

1. Your affiant received information from an informant on 10/14/99 that the resident of 921 Humbolt S.E. was involved in the sale of narcotics. The informant stated the resident is selling the controlled substance crack cocaine. The informant described the resident and seller of the controlled substance as "Chris," B/M, approx. 20, 5'8", 170, medium build/complexion, short hair.

Unnamed Informants

2. Your affiant met with a reliable and credible informant on 11/3/99. Your affiant was advised that the informant had observed the controlled substance cocaine available for sale from the residence within the past 36 hours.
3. Your affiant was advised by the informant the entry door to the suspect's apartment has been reinforced to delay a police entry.

Violations of Constitution and Statutes

- The exclusionary rule does not apply to violations of statutes and court rules if the police are acting in reasonable and in good faith reliance on a search warrant. The exclusionary rule applies to constitutional violations. *People v Hawkins* 468 Mich 488, ___ NW2d ___ (2003).
- *Sherbine* and *Sloan* are overruled.

Informants: Legislature

Two-Pronged Test:

- If the informant is named, affirmative allegations from which magistrate may conclude that the person spoke with personal knowledge of the information.
- If the informant is unnamed, affirmative allegations from which magistrate may conclude that
- The person spoke with personal knowledge of the information and
- Either
 - Unnamed person is credible or
 - That the information is reliable.

Informants: Supreme Court

- Look to the Totality of the Circumstances
- Evidence will not be suppressed if the statute is violated.

Unnamed Informant: Is Information Reliable?

That affiant has been informed by Curtis Render, manager of the Cherryland Mall, that approximately 6 people in the last three months have reported to him that while in the men's public restroom they have observed either other males staring at them while using the bathroom or have observed two persons within one toilet stall and the persons being adults as opposed to a father/son usage of the facilities.

Unnamed Informant: Is Information Reliable?

Search warrant affidavit failed to establish that statements made to mall manager concerning activities in restroom were reliable or from credible informants and thus failed to establish probable cause for search warrant to monitor restroom because statements were, without corroboration, conclusory with respect to establishing homosexual activity. *People v Kalchik*, 160 Mich App 40, 407 NW2d 627 (1987).

Double Hearsay

The affiant averred that informant Norman Wilson had been told by Kevin Jackson that defendant had moved to the Holden Street address.

Double Hearsay

Such multiple hearsay statements may be used to establish probable cause where the ordinary requirements of personal knowledge and reliability or credibility are met. *People v Poole* 218 Mich App 702, 555 NW 2d 485 (1996).

Probable Cause



Probable Cause Based On All Of The Facts Within The 4 Corners

The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. MCL 780.653

Just the Facts, Ma'am, Not Conclusions

A magistrate abdicates his judicial function regarding search warrants when he only accepts the affiant's conclusory statements:
The vice of stating a "mere conclusion" and in failing to state the underlying circumstances upon which the conclusion is based is that without a statement of underlying circumstances the magistrate must accept the inferences drawn by the affiant rather than make his own independent evaluation. *People v Zoder* 15 Mich App 118, 166 N.W.2d 289 (1968).

Probable Cause Based on All of the Facts Within the 4 Corners

Requiring reviewing courts to consider sworn, yet unrecorded, oral testimony would exact a significant burden on such courts because of the evidentiary risks inherent in the procedure. If reviewing courts had to test probable cause determinations on the basis of sworn, yet unrecorded, oral testimony, such courts would be forced to regularly conduct supplemental hearings in order to develop a record of the sworn, yet unrecorded, oral testimony that was allegedly conveyed to the magistrate.

Probable Cause Based On All Of The Facts Within The 4 Corners

The magistrate and the affiant would have to testify regarding their recollections of what was purportedly said at the time that the warrant was sought, and the magistrate would have to be able to explain which statements he relied on to determine that probable cause existed. What is problematic about this procedure is that, with the passage of time, the memories of the affiant and the magistrate may become faded and confused. Given those types of risks, the possibility for intentionally untruthful recollections also arises. *People v. Sloan* 450 Mich 160, 538 NW 2d 380 (1995).

Probable Cause: Standard

Probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief the certain items may be contraband. *People v. Custer* 465 Mich 319, 630 NW2d 870 (2001)

Probable Cause: Standard

Is this Probable Cause
or Suspicion?

Probable Cause: Standard

- 1) Affiant is a sworn member of the Detroit Police Department Narcotic Division and as such was assigned to investigate a narcotic complaint at 18072 Bloom.

Probable Cause Standard

2) On July 09, 1997, Affiant who is assigned to the Detroit Police Narcotic Division attempted a purchase of narcotics from 18072 Bloom. The above described seller asked the Affiant what the Affiant wanted, Affiant replied "one" meaning one (1) pack of heroin. The above described seller produced from his right front pocket a large bundle of blue folded small coin envelopes wrapped in rubber bands. The seller looked at Affiant and asked Affiant who did Affiant know. Affiant was unable to convince the seller to sell illegal narcotics. The described seller stated come back with someone I know and I'll take care of you.

Probable Cause: Standard

3) Affiant has participated in over 100 Narcotics Raids in the City of Detroit, and an overwhelming majority of these raids, illegal firearms were found and confiscated, these weapons were used to protect the illegal drug trade. Affiant has seen heroin in such coin envelopes on numerous occasions, and is very familiar with the appearance of heroin and its packaging.

Probable Cause: Standard

- 4) Therefore affiant has probable cause to believe that the above mentioned articles will be found on the aforementioned premises and due to the affiants experience as a narcotics officer, there will be guns on the premises for the protection of the seller.

Probable Cause: Standard

A search warrant should be upheld if a substantial basis exists to conclude that there is a fair probability that the items sought will be found in the stated place.

People v. Russo, 439 Mich. 584, 604, 487 N.W.2d 698 (1992); *People v. Head*, 211 Mich.App. 205, 208, 535 N.W.2d 563 (1995).

Probable Cause: Standard

The reviewing court should ask whether a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. *Head, supra*. The underlying affidavit must be read in a common sense and realistic manner, and the trial court's findings of fact are reviewed for clear error. *Id.* *People v Whitfield* 461 Mich 441, 607 NW 2d 61 (2000)

Probable Cause: Standard

The preference for warrants set forth in *Illinois v. Gates*, 462 U.S. 213 (1983), *United States v. Ventresca*, 380 U.S. 102 (1965), and *Brinegar v. United States*, 338 U.S. 160, (1949), requires the reviewing court to ask only whether a reasonably cautious person could have concluded that there was a "substantial basis" for the finding of probable cause.

Probable Cause: Standard

In *Gates*, 462 U.S. at 236-237, the Court held: "We have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate's 'determination of probable cause should be paid great deference by reviewing courts.' 'A grudging or negative attitude by reviewing courts toward warrants,' is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant;

Probable Cause: Standard

‘Courts should not invalidate warrants by interpreting affidavits in a hyper technical, rather than a commonsense, manner.’

"... The traditional standard for review of an issuing magistrate's probable-cause determination has been that so long as the magistrate had a 'substantial basis for ... concluding' that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more. *People v Whitfield* 461 Mich 441, 607 NW 2d 61 (2000)

Probable Cause: Standard

A search warrant and the underlying affidavit are to be read in a common-sense and realistic manner; affording deference to the magistrate's decision to issue a search warrant simply requires that reviewing courts ensure there is a substantial basis for the magistrate's conclusion that there is a fair probability that contraband or evidence will be found in a particular place.

People v Whitfield 461 Mich 441, 607 NW2d 61 (2000).

Probable Cause: Standard

For probable cause to exist, there must be a fair probability that contraband or evidence of a crime will be found in a particular place *Illinois v Gates* 462 US 213 (1983); however, a finding of probable cause does not require that it is more likely than not that a search will turn up the type of item suspected. *People v Snider* 239 Mich App 393, 608 NW2d 502 (2000).

Probable Cause: Standard

In determining probable cause, court must examine police officer's observations in light of the officer's experience and training. *People v Levine* 461 Mich 172, 600 NW2d 622 (1999)

Probable Cause: Standard

- Rollover accident
- Police attempted to question man and he ran away
- Defendant apprehended
- Police smelled the strong odor of intoxicants.

Probable Cause: Standard

From their observation of a rollover vehicle accident and the strong smell of intoxicants on the person who is inferentially the driver of the vehicle, the police may form the reasonable conclusion that the intoxicated individual was operating the vehicle when the accident occurred. *People v Oumedian* Unpublished. 2003 WL 1904345 (2003)

Probable Cause: Standard

Is there Probable Cause?

Probable Cause: Standard

- "1. Affiant is a Sgt. with the Hesperia Police Department, Oceana County, Michigan, and is a resident of the County of Oceana.
- "2. The Department has had information, suspicions, investigations with regard to said premises described above to be searched as being used in conjunction with the sale and delivery of the controlled substance marijuana.

Probable Cause: Standard

"3. That a confidential informant has provided information based upon his/her personal knowledge that he/she has purchased a substance represented to him or her to be marijuana at the home and residence herein described within the last 24 hours, and that such informant spoke with his/her personal knowledge and has made admissions against his or her penal interest.

Probable Cause: Standard

"4. That the above informant's information is further corroborated by another separate distinct confidential informant who has in the last two months provided information that he/she had purchased a substance represented to him/her to be marijuana at the same home and residence described above and as indicated by the informant in paragraph 3, and that this informant has provided to the Hesperia Police Department information in the past which has proven reliable.

Probable Cause: Standard

"5. That the informants herein fear for their personal safety and therefore, remain confidential."

Probable Cause: Standard

Affidavit did not establish probable cause where it alleged that informant purchased a substance represented to be marijuana, there was no allegation that informant observed any other quantities of marijuana, there was no allegation of when the informant had purchased the substance, and no indication of reliability of informant other than affiant's conclusory statement. *People v Gleason* 122 Mich App 482, 333 NW 2d 85. (1983).

Probable Cause: Standard

The informant was named, the affidavit contains an affirmative allegation that the informant observed defendant driving erratically and weaving, and it indicates that the affiant conducted an independent investigation that produced corroborating evidence.

Probable Cause: Standard

- Search warrant affidavit established probable cause for withdrawal of blood based on:
 - information from named informant and
 - affidavit contained affirmative allegation that informant observed defendant driving erratically and weaving and
 - affiant conducted independent investigation that produced corroborating evidence. *People v Harris* 191 Mich App 422, 479 NW 2d 6 (1991).

Probable Cause: Printed Form

- Fact that search warrant for blood draw used a printed form did not render the search warrant invalid.
- The affidavit here, when viewed by any reasonable person, contains sufficient specific facts to support a finding of probable cause.
People v Harris 191 Mich App 422, 479 NW 2d 6 (1991)

Probable Cause: PBT Results

- The arresting officer, prepared an affidavit in application for a search warrant, stating he smelled alcohol on defendant's breath and reciting the PBT results of 0.21.
- *Can PBT results be used to establish Probable Cause?*

Probable Cause: PBT Results

- PBT results can be used. *People v Tracy*, 186 Mich App 171, 463 NW2d 457 (1990)

Probable Cause: Staleness

Is this information stale?

(1) On April 25, 1989, the affiant interviewed the girl, and she reported that she was sexually abused by the defendant at his home every other weekend over a four-year period, beginning in the fall of 1978 and ending in August, 1982, while she was between the ages of five and ten years old;

Probable Cause: Staleness

(2) The girl described having been photographed by the defendant "naked or in various stages of undress" and having been video taped alone or with the suspect involved in sexual activity; and

Probable Cause: Staleness

- (3) She reported being shown the photographs and videotapes "numerous times" by the defendant during her visits to his home and that she was familiar with the different locations within the home where the defendant stored the material, and the fact that the photographs were "bound in piles held together by string or rubber bands."

Probable Cause: Staleness

Search Warrant must be supported by probable cause existing at time warrant is issued;

Probable Cause: Staleness

Where suspicion of criminal activity has focused on a specific individual by a standard more probable than not, and it is alleged that the evidence sought was created, retained, and employed in ongoing criminal activity over a four-year period, the magistrate could reasonably conclude that there was a "fair probability" that the evidence would be retained in the residence of the accused. *People v. Russo*, 439 Mich 584, 487 NW 2D 698 (1992).

Probable Cause: Staleness

There is no bright line rule. *People v Russo* 439 Mich 584, 487 NW 2d 698 (1992)

Probable Cause: Staleness

- Sometime between the 9th and 15th of January, the defendant and the young girl had sexual contact in the pole barn behind defendant's house.
- Such activity had been going on for at least a year and a half.

Probable Cause: Staleness

- Defendant had also begun photographing his exploits with the child in December and retained the pictures.
- The photographs were last seen on the January 11th.

Probable Cause: Staleness

- Lapse of time between occurrence of underlying facts and the issuance of search warrant does not automatically render information stale.
- Long history of sexual abuse and observation of photos in January 11 was sufficiently fresh on February 27. *People v Osborn* 122 Mich App 63, 329 NW 2d 533 (1982)

Probable Cause: Staleness

- The first delivery on January 10, which forms the basis of defendant's conviction, was not an isolated occurrence.
- There was a second delivery on January 16, attested to in the affidavit accompanying the search warrant
- The search warrant was issued on Jan. 17.

Is this information stale?

Probable Cause: Staleness

Search warrant obtained and executed seven days after the alleged delivery of heroin was not based on stale information since there was corroborative information obtained at least 24 hours before the warrant's issuance. *People v. Gillam* 93 Mich App 548, 286 NW 2d 890 (1979).

Probable Cause: Staleness

Is this information stale?

- On 6/28/90 Hemp Tip number C-01-90 was received stating that a Karl Stumpf had received eight (8) shipments of marijuana seeds and/or equipment used for growing marijuana within the past 16 months at 18990 Victor....

Probable Cause: Staleness

- If circumstances indicate defendant is growing marijuana and not just possessing marijuana, the lapse of time in informant's information does not defeat probable cause because seeds take time to germinate and grow. *People v Stumpf* 196 Mich App 218, 492 NW 2d 795 (1992).

Probable Cause: Staleness

Can a search warrant be issued if affidavit states that informant bought heroin in a controlled buy about three days before the affidavit was signed?

Probable Cause: Staleness

Even if probable cause for search warrant existed after controlled drug buy, such did not mean that probable cause existed when warrant was issued approximately three days later. *People v David* 119 Mich App 289, 326 NW2d 485 (1982).

Probable Cause: Staleness

- Within the past 72 hours of the date of this search warrant this informant observed controlled substances inside of the named location.
- The informant further states that 'Big Daddy' has stated to the informant that he is never out of dope.

Is this information stale?

Probable Cause: Staleness

Statement that informant observed controlled substances within the past 72 hours coupled with statement that defendant was “never out of dope” provided probable cause.

People v Humphrey 150 Mich App 806, 389 NW 2d 494 (1986).

Probable Cause

What if the probable cause does not yet exist but will exist after certain events occur?

Probable Cause: Anticipatory Search Warrant

“Anticipatory warrant” for search is one that is issued before events necessary for probable cause have occurred. *People v Brake* 208 Mich App 233, 527 NW2d 56 (1994).

Probable Cause:

Anticipatory Search Warrants

- Police discover 28 lbs. of marijuana in UPS package after obtaining a search warrant
- Thereafter, officers obtained a warrant allowing them to install within the parcel an electronic monitoring device that would be programmed to emit a signal when the parcel was opened, and allowing the officers to enter and search the house to which the package was addressed when the transmitter emitted the signal. The parcel was then resealed with the transmitting device secured within the parcel.

Probable Cause: Anticipatory Search Warrant

- Package was delivered
- Home was searched after hearing tone
- No information other than UPS package that there were drugs at the house
- Search warrant provided that house would be searched after the package was delivered and if no tone, would wait a reasonable time
- If package not delivered, home would not be searched.

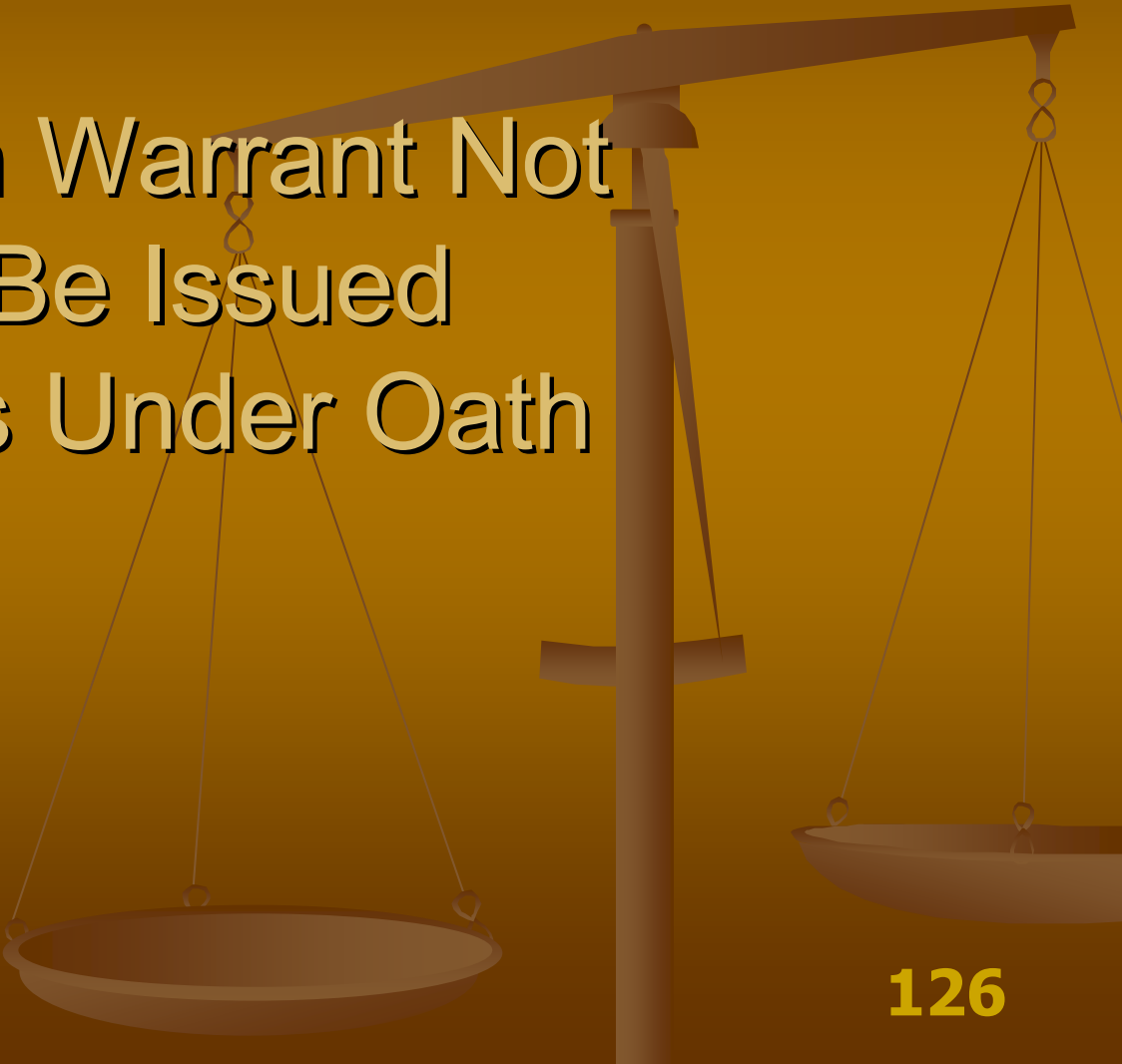
Probable Cause: Anticipatory Search Warrant

Anticipatory Search Warrant is Valid in this case. *People v Kaslowski* 239 Mich App 320, 608 NW2d 539 (2000); *United States v. Garcia*, 882 F.2d 699, 702 (C.A.2, 1989)

Probable Cause:

Anticipatory Search Warrant

- Magistrates and judges should take care to require independent evidence establishing probable cause that the contraband will be located at the premises at the time of the search.
- Further, the magistrate should protect against its premature execution by listing in the warrant the conditions governing its execution.
- Read *People v Kaslowski* 239 Mich App 320, 608 NW2d 539 (2000) before issuing anticipatory search warrant.



Search Warrant Not
To Be Issued
Unless Under Oath

Administer Oath

Ask if averments in the affidavit
are true to the best of affiant's
information and belief.

**What If The
Affiant Does
Not Sign The
Affidavit?**



Unsigned Affidavit

M.C.L. § 780.651; M.S.A. §28.1259(1), requires the affidavit to be made on oath to a magistrate. The requirement of an oath or affirmation is designed to guarantee that the information submitted to support a finding of probable cause to issue a search warrant is sworn to by the affiant. An affidavit given under oath assures that the information submitted in support of the search warrant is sworn to by the affiant.

Unsigned Affidavit

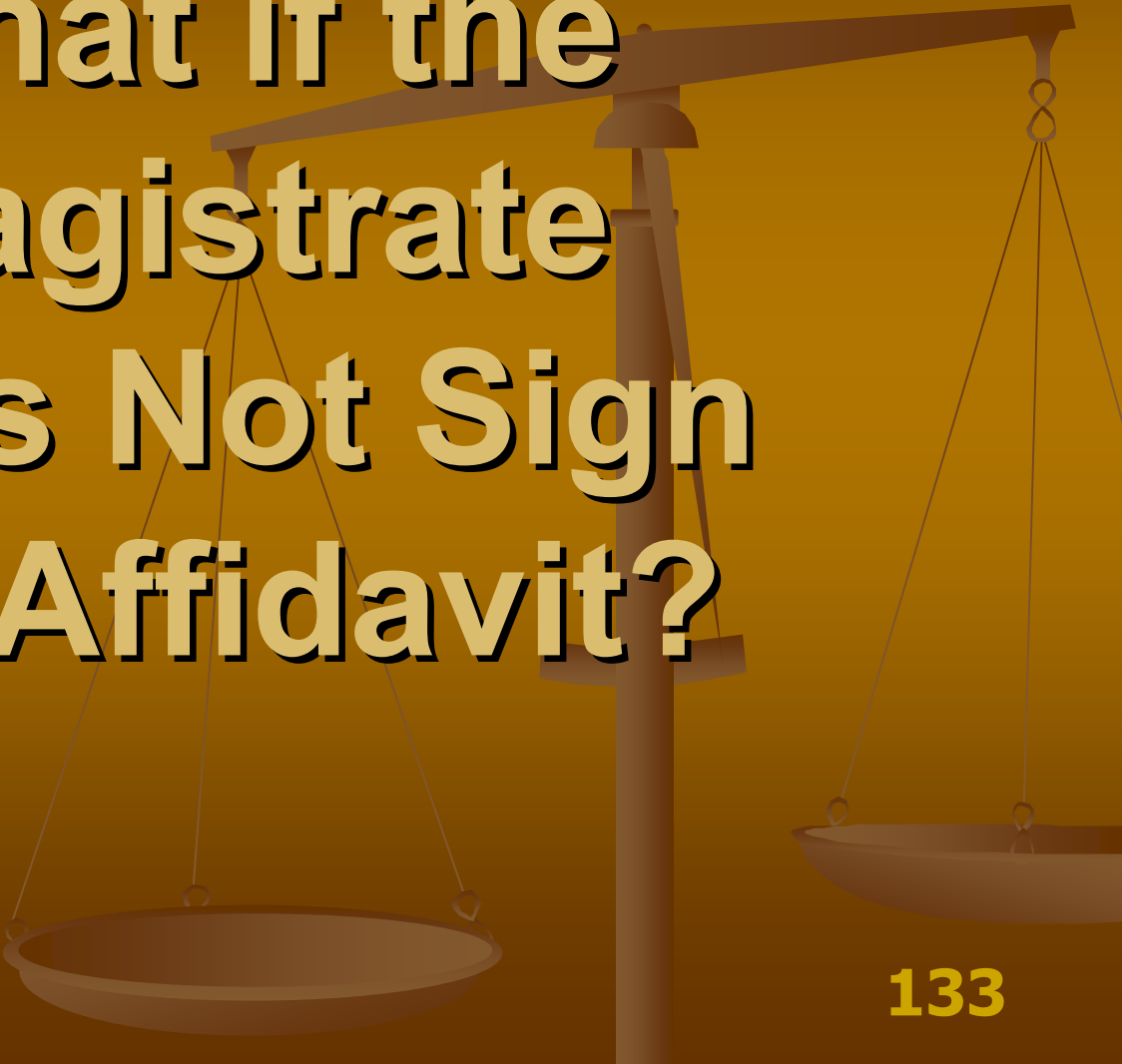
A search warrant should not necessarily be invalidated by the failure of the affiant to affix his signature to the affidavit. The Michigan and United States Constitutions require that search warrants must be supported by oath *or* affirmation.

Unsigned Affidavit

Therefore, we hold that a search warrant based upon an unsigned affidavit is presumed invalid, and any evidence seized pursuant to that search warrant must be excluded. However, the prosecution may rebut this presumption of invalidity by a showing that the affidavit was made on oath to a magistrate.

Unsigned Affidavit

- Assuring that affidavits are sworn and that police departments carefully comply with warrant requirements, as well as considerations of the efficient administration of justice, support requiring an affiant to sign the affidavit. An unsigned affidavit wastes scarce judicial resources by requiring an evidentiary hearing on the question whether the affidavit was made on oath to a magistrate. These considerations apply with equal force now as they did then.
- *People v Mitchell* 428 Mich 364, 408 NW2d 798 (1987).



**What if the
Magistrate
Does Not Sign
the Affidavit?**

Magistrate to Sign

In this case, the affidavit for a search warrant contained a space where the magistrate was to put his signature, however the space was blank. Pursuant to *Mitchell*, the critical question is whether the affidavit was made "on oath to a magistrate."

Magistrate to Sign

The critical question is whether the affidavit was made "on oath to a magistrate." Mitchell indicates that it would suffice if the information in the affidavit was sworn to before a magistrate.

Magistrate to Sign

Thus, though the affidavit was unsigned, it could still be valid if the prosecution could show that the factual allegations offered in support of the affidavit were made by the affiant under oath to the magistrate. *People v Tice* 220 Mich App 47, 558 NW2d 245 (1996).

Can the Oath Be Taken Over the Phone?

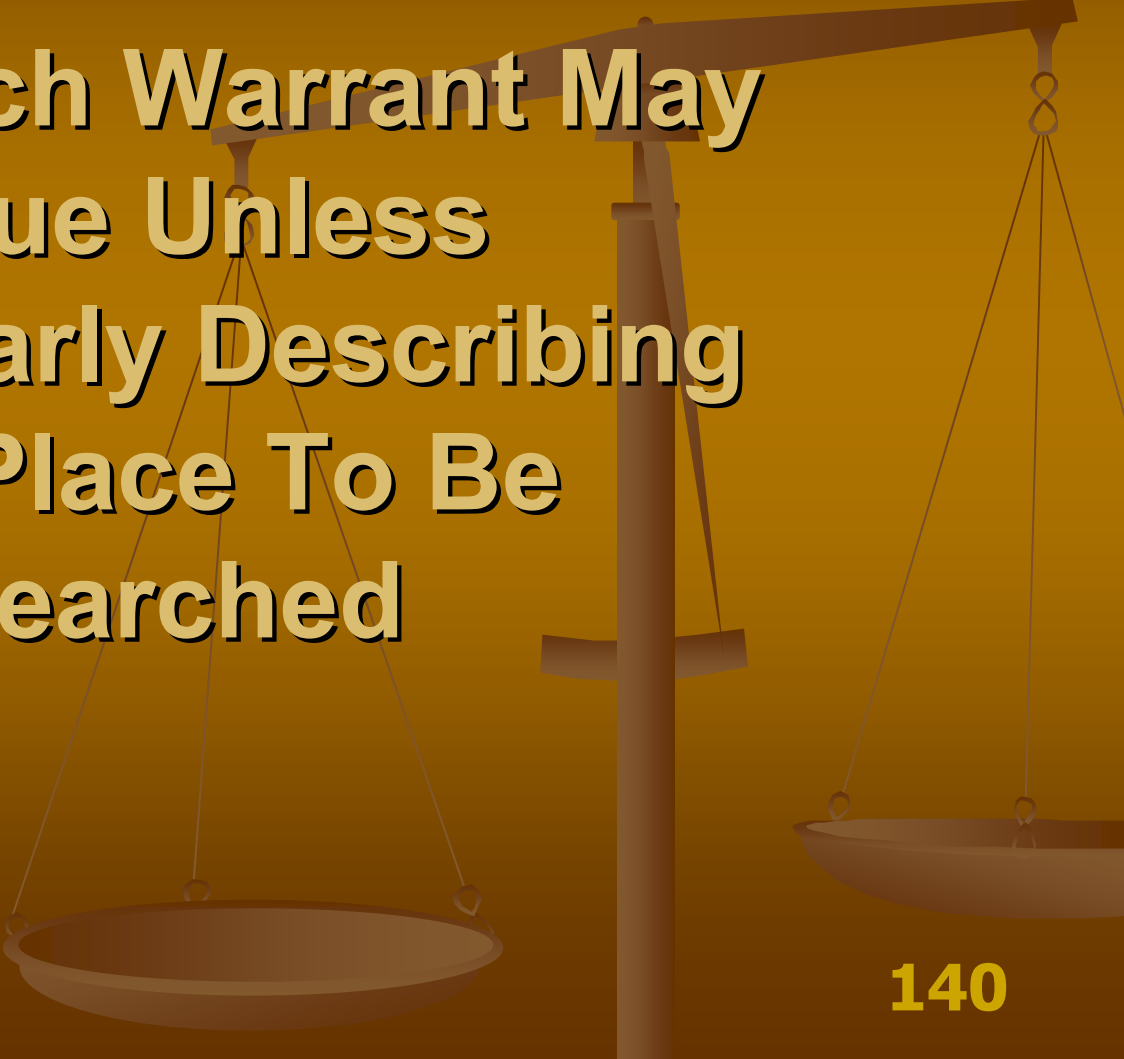
At the judge's instruction over the telephone, the officer raised his right hand and swore to the affidavit. The officer then signed the affidavit and faxed a copy of the signed affidavit to the judge, who then signed the warrant and faxed a copy to the officer.

Administer Oath Over the Phone

Generally, the purpose of the oath is to impress upon its taker the importance of providing accurate information. See *People v. Ramos*, 430 Mich. 544, 548, 424 N.W.2d 509 (1988). The same holds true in the context of the constitutional oath requirement for a search warrant. In *Turner*, 558 F.2d 46, 50 (CA 2, 1977)] the court held that long-distance swearing of an oath over the telephone offended no constitutional precepts. *People v Snyder* 181 Mich App 768, 449 NW2d 703 (1989).

Administer Oath

Detective's testimony and Judge's testimony regarding customary procedures in taking oath over the phone was sufficient to establish that affidavit was properly sworn to. U. S. v. Wolfe, ED Mich 22 F Supp 2d 627 (1998).



**No Search Warrant May
Issue Unless
Particularly Describing
the Place To Be
Searched**

Location of Search Must Be Described with Particularity

Page 1 of the warrant stated:

A two story wood frame single family dwelling tan with brown trim and an open extended porch. This house is on the east side of Chittock St two houses north of Rockwell St. This residence is more commonly known as 1045 Chittock St.

Location of Search Must Be Described with Particularity

Page 4 of the warrant stated:

624 Onondaga, township of Ypsilanti, county of Washtenaw, state of Michigan. The location is further described as a tri-level, single family dwelling with white siding, light colored brick, black shutters, and a one car attached garage. The front door faces to the east and the numbers 624 are to the left of the door.

Location of Search Must Be Described with Particularity

The test for determining sufficiency of description in search warrant of place to be searched is:

- 1) whether place to be searched is described with sufficient particularity to enable executing officer to locate and identify premises with reasonable effort, and
- (2) whether there is any reasonable probability that another premises might be mistakenly searched.
People v Hampton 237 Mich App 143, 603 NW2d 270 (1999)

Location of Search Must be Described with Particularity

Search of shed located within curtilage of farmhouse was improper by reason of the failure of the warrant to specifically describe that place as being subject of the warrant. *People v. Mackey* 121 Mich App 748, 329 NW2d 476 (1982).

Location of Search Must Be Described with Particularity

All rooms, compartments, crawlspaces, hallways, storage areas, porches and any attic or basement accessible therefrom of 483 Montana, City of Pontiac, County of Oakland, State of Michigan. It is described as a single-story, single-family dwelling with white siding.

Location of Search Must Be Described with Particularity

The police can search a detached garage or a dog run if the search warrant allows a search of storage areas. *People v McGhee* 255 Mich App 623, 662 N.W.2d 777 (2003).

Location of Search Must Be Described with Particularity

The building in this case has two apartments, one upstairs and one downstairs. The police informant purchased narcotics in the upstairs apartment from an individual who has not yet been apprehended. The present defendant was not involved in that sale. The police and the magistrate who issued the search warrant apparently were under the impression that the building was a single dwelling unit.

Location of Search Must Be Described with Particularity

When the police executed the warrant, they discovered the defendant and the evidence which is now sought to be suppressed in the downstairs apartment. That unit would not have been entered if the warrant had authorized a search only of the unit in which the informant made his purchase.

Location of Search Must Be Described with Particularity

If the police know the building is a multiple dwelling, police must list the subunit that is to be searched. *People v Kinnebrew* 75 Mich App 81, 254 NW 2d 662 (1977).

Location of Search Must Be Described with Particularity

- The search warrant provided that the place to be searched was a "townhouse located at 4152 Seaway Drive, Eaton County, Lansing, Michigan, said townhouse being a brick front, single story, with 4152 address believed to be occupied by Randy Krokker".
- Deputy Barry Kingsley, one of several police officers who executed this warrant, testified at trial that after gaining entry to the described premises, the police officers secured the area by rounding up defendant and two other persons who were also present. Deputy Kingsley searched defendant's person and removed from his front, left pants pocket a vial containing foil packets.

Location of Search

- Limited to the present facts we find the clothing search reasonable. It is logical that the pockets of defendant on the premises were suspect as receptacles of heroin small enough to be so concealed. We do not endorse the prosecutor's opinion that the scope of the warrant would extend to every person found on the premises.

Location of Search

Better procedure would be to set forth specifically in the search warrant that defendant was a person to be searched and not merely to issue a warrant authorizing search of the building.

People v Krokker 83 Mich App 474, 268 NW2d 689 (1978).

Location of Search

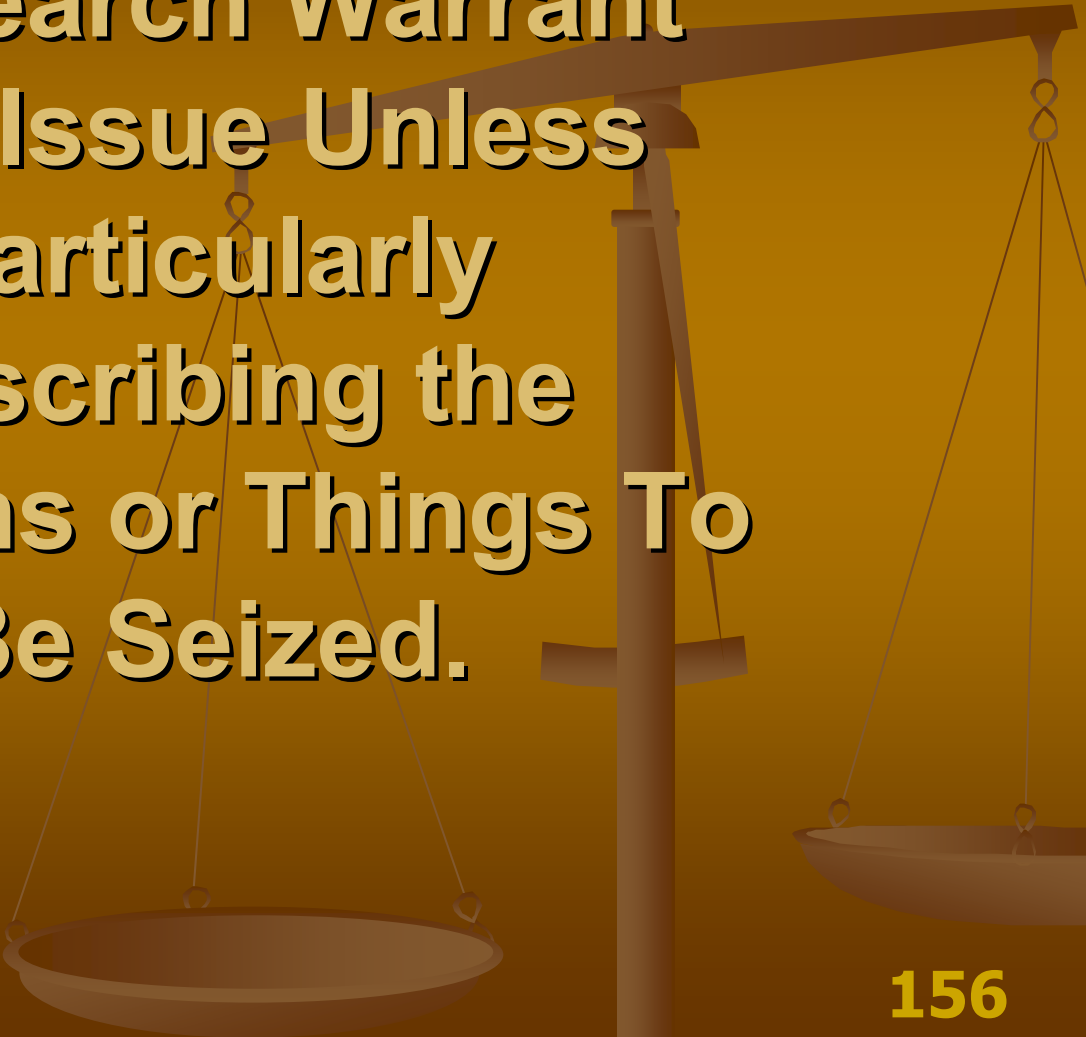
- *Can the search warrant be executed outside of the District Court's Jurisdiction?*
- *Can a Search Warrant issued in Ingham County Be Executed in Isabella County?*

Location of Search

- Judge May Sign a Warrant for a Search Outside of the Court's Jurisdiction.
People v Fiorillo 195 Mich App 701, 491 NW2d 281 (1992).
- Recorder's Court is limited to Detroit

Location of Search

- Michigan Judge's Search Warrant Is Not Valid for a Search Outside of Michigan.
- Procedure for Search of the Internet.



**No Search Warrant
May Issue Unless
Particularly
Describing the
Persons or Things To
Be Seized.**

Property to Be Seized

A warrant may be issued to search for and seize any property or other thing which is either:

- (a) Stolen or embezzled in violation of any law of this state.
- (b) Designed and intended for use or which is or has been used as the means of committing a criminal offense.
- (c) Possessed, controlled or used wholly or partially in violation of any law of this state.

Property to Be Seized

- (d) Evidence of crime or criminal conduct on the part of any person.
- (e) Contraband.
- (f) The bodies or persons of human beings or of animals, who may be the victims of a criminal offense.
- (g) The object of a search warrant under any other law of this state providing for the same. If a conflict exists between this act and any other search warrant law, this act shall be deemed controlling. MCL 780.652

CSC Cases

If the court has probable cause to believe that an individual violated the [CSC laws] the court shall, upon proper petition for a search warrant, authorize the search and seizure of hair or tissue, or blood or other fluid samples from all of the following:

- (a) Any individual whom the court has probable cause to believe committed that violation.
- (b) If the court has probable cause to believe that the violation resulted in the birth of a child, that child.

CSC Cases

- (c) If the court has probable cause to believe that the violation resulted in a pregnancy that was terminated before the birth of a child, the remains of that unborn child.
 - (2) This section does not prohibit the court from issuing a search warrant for other evidence as considered appropriate by the court.
- MCL 780.652a

Property to Be Seized

- Taking of a motorist's blood to determine blood alcohol content constitutes a search and seizure under the Fourth Amendment. *People v Borchard-Ruhland*. 460 Mich 278, 597 NW2d 1 (1999); *Schmerber v. California*, 384 U.S. 757 (1966).
- Question in *Borchard-Ruhland* was of whether defendant consented to withdrawal of blood.

Property to Be Seized

***Can documents which are
privileged be seized pursuant
to a search warrant?***

Property to Be Seized

Documents created by hospital peer review body exclusively for peer review purposes were not subject to disclosure pursuant to a search warrant in a criminal investigation. *In re Lieberman* 250 Mich App 381, 646 NW2d 199 (2002).

Property to Be Seized

Can the police seize a checkbook if the search warrant provides for the seizure of:

“3. Books, records, invoices, receipts, records of real estate transactions, bank statements and related records, passbooks, money drafts, letters of credit, money orders, bank drafts and cashiers checks, bank checks, safe deposit box keys, money wrappers, and other items evidencing the obtaining, secreting, transfer, and/or concealment of assets and the obtaining, secreting, transfer, concealment, and/or expenditure of money.”?

Property to Be Seized

Checkbook seized at defendant's trailer fell within items described in search warrant for trailer, which included books, records, invoices, and bank statements and related records. Warrant could have been more specific but it was sufficient. *People v Fetterly* 229 Mich App 511, 583 NW 2d 199 (1998).

Property to Be Seized

*Can a search warrant be
issued to seize a person for
the purposes of a lineup?*

Property to Be Seized

Search warrant cannot serve a sole basis for seizure of criminal suspect but evidence seized by officers through their arrest of suspect in home did not have to be suppressed, inasmuch as magistrate had previously determined, in issuing search warrant, that there was probable cause to believe that defendant was inside home, and officers already had probable cause to believe that defendant had committed assault and battery. *People v Johnson* 431 Mich 683, 431 NW2d (1988).

Search Warrants by Fax

Affidavit by means of electronic communication. An affidavit for a search warrant may be made by any electronic or electromagnetic means of communication if both of the following occur:

Search Warrant by Fax if:

- (a) The judge or district court magistrate orally administers the oath or affirmation to an applicant for a search warrant who submits an affidavit under this subsection.
- (b) The affiant signs the affidavit. Proof that the affiant has signed the affidavit may consist of an electronically or electromagnetically transmitted facsimile of the signed affidavit. MCL § 780.651(2); MSA § 28.1259(1)

Search Warrants by Fax

- Warrant, electronic issuance; court order for blood alcohol or controlled substance test, electronic issuance. A judge may issue a written search warrant in person or by any electronic or electromagnetic means of communication. If a court order required pursuant to . . . MCL 257.625a . . . , is issued as a search warrant, the written search warrant may be issued in person or by any electronic or electromagnetic means of communication by a judge or by a district court magistrate. MCL § 780.651(3); MSA § 28.1259(1)

Search Warrants by Fax

Warrant, electronic issuance, proof of signature.

The peace officer or department receiving an electronically or electromagnetically issued search warrant shall receive proof that the issuing judge or district court magistrate has signed the warrant before the warrant is executed. Proof that the issuing judge or district court magistrate has signed the warrant may consist of an electronically or electromagnetically transmitted facsimile of the signed warrant. MCL § 780.651(4); MSA § 28.1259(1)

Search Warrants by Fax

The state court administrator shall establish paper quality and durability standards for warrants issued under this section. MCL 780.651(5); MSA § 28.1259(1)

Search Warrant and Affidavit are Non-Public Records

- (8) Except as provided in subsection (9), an affidavit for a search warrant contained in any court file or court record retention system is nonpublic information. MCL 780.651(8)

Search Warrant and Affidavit are Non-Public Records

- (9) On the fifty-sixth day following the issuance of a search warrant . . . the search warrant affidavit contained in any court file or court record retention system is public information unless, before the fifty-sixth day after the search warrant is issued . . . a peace officer or prosecuting attorney obtains a suppression order from a magistrate upon a showing under oath that suppression of the affidavit is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness. The suppression order may be obtained ex parte in the same manner that the search warrant was issued. An initial suppression order issued under this subsection expires on the fifty- sixth day after the order is issued. A second or subsequent suppression order may be obtained in the same manner as the initial suppression order and shall expire on a date specified in the order. This subsection and subsection (8) do not affect a person's right to obtain a copy of a search warrant affidavit from the prosecuting attorney or law enforcement agency under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. MCL 780.651(9).

Search Warrant and Affidavit are Non-Public Records

- Affidavit is nonpublic information for 56 days
- May be suppressed longer upon request.
- May be subject to Freedom of Information Act.
MCL § 780.651(8); MSA § 28.1259(1)

Directions to Police Officer

- **Sec. 4. (1)** A search warrant shall be directed to the sheriff or any peace officer, commanding the sheriff or peace officer to search the house, building, or other location or place, where any property or other thing for which the sheriff or peace officer is required to search is believed to be concealed. Each warrant shall designate and describe the house or building or other location or place to be searched and the property or thing to be seized. MCL 780.654, MSA 28.1259(4)

Directions to Police Officer

(2) The warrant shall either state the grounds or the probable or reasonable cause for its issuance or shall have attached to it a copy of the affidavit. MCL 780.654, MSA 28.1259(4)

Directions to Police Officer

(3) Upon a showing that it is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness, the magistrate may order that the affidavit be suppressed and not be given to the person whose property was seized or whose premises were searched until that person is charged with a crime or named as a claimant in a civil forfeiture proceeding involving evidence seized as a result of the search. MCL 780.654, MSA 28.1259(4)

Directions to Police Officer

Sec. 5. (1) When an officer in the execution of a search warrant finds any property or seizes any of the other things for which a search warrant is allowed by this act, the officer, in the presence of the person from whose possession or premises the property or thing was taken, if present, or in the presence of at least 1 other person, shall make a complete and accurate tabulation of the property and things that were seized...

Directions to Police Officer

Sec. 5. (1) continued... The officer taking property or other things under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and shall give to the person a copy of the tabulation upon completion, or shall leave a copy of the warrant and tabulation at the place from which the property or thing was taken. The officer is not required to give a copy of the affidavit to that person or to leave a copy of the affidavit at the place from which the property or thing was taken. MCL 780.655; MSA 28.1259(5)

Directions to Police Officer

(2) The officer shall file the tabulation promptly with the court or magistrate. The tabulation may be suppressed by order of the court until the final disposition of the case unless otherwise ordered. The property and things that were seized shall be safely kept by the officer so long as necessary for the purpose of being produced or used as evidence in any trial. MCL 780.655; MSA 28.1259(5)

Directions to Police Officer

(3) As soon as practicable, stolen or embezzled property shall be restored to the owner of the property. Other things seized under the warrant shall be disposed of under direction of the court or magistrate, except that money and other useful property shall be turned over to the state, county or municipality, the officers of which seized the property under the warrant. Money turned over to the state, county, or municipality shall be credited to the general fund of the state, county, or municipality. MCL 780.655; MSA 28.1259(5)

Directions to the Police Officer

- Search described place
- Search for property to be seized
- Tabulate what was taken
- Return tabulation to the court
- Leave a copy of the warrant
- Affidavit need not be left
- Affidavit may be suppressed, if necessary to
 - Protect an ongoing investigation
 - Protect privacy or safety of victim or witness

Directions to Police Officer

Failure by the police to comply with former statute requiring that warrant and affidavit be left at scene does not require suppression of the evidence. *People v. Sobczak-Obetts* 463 Mich 687, 625 NW 2d 764 (2001).

Knock and Announce

The officer to whom a warrant is directed, or any person assisting him, may break any outer or inner door or window of a house or building, or anything therein, in order to execute the warrant, if, after notice of his authority and purpose, he is refused admittance, or when necessary to liberate himself or any person assisting him in execution of the warrant.

MCL 780.656; MSA 28.1259

Knock and Announce

The knock and announce statute requirement that officers identify themselves and state their authority and purpose before entering a private residence has its roots in the Fourth Amendment. Three to six second wait was constitutionally invalid. Strict compliance not necessary if delay would result in the destruction of the evidence, increase the danger to the police officers, or have been a useless gesture. *People v Polidori* 190 Mich App 673, 476 NW 2d 482 (1991).

Knock and Announce

In order to comply with the statute, it is not necessary that the inhabitants of a dwelling actually hear the person's announcement, as long as the announcement was reasonably calculated to provide notice under the circumstances. Factors that indicate whether an officer's announcement was reasonably calculated to provide notice under the circumstances include whether the announcement was made with sufficient volume for an average person inside to hear and the time between the announcement and a subsequent forcible entry.

Knock and Announce

Purpose of knock and announce statute is to ensure that before search warrant is executed, police communicate to occupants of dwelling that they are present and why. Statute not complied with where 5 persons within earshot did not hear police officers' announcement. *People v Ortiz* 224 Mich App 468, 569 NW2d 653 (1997).

Knock and Announce

- Entry of officers substantially complied with knock and announce statute where officers observed young male running towards the stairs following the officers knock and announcement. *People v Slater* 151 Mich App 432, 390 NW2d 260 (1986).
- See also *People v Williams* 198 Mich App 537, 499 NW2d 404 (1993).

Knock and Announce

- Strict compliance with knock and announce statute may be excused if police officers have basis to conclude that evidence will be destroyed or lives will be endangered by delay.
- Less than 5 seconds delay insufficient unless excused. *People v Asher* 203 Mich App 621, 513 NW 2d 144 (1994).

Knock and Announce

- Not necessary to knock. Repeatedly announcing “Police, Search Warrant” over a loudspeaker from a clearly marked police vehicle 30 to 60 seconds before entry is sufficient. *People v Fetterly* 229 Mich App 511, 583 NW 2d 735 (1998).

Knock and Announce

- Police officer's violation of knock and announce statute in executing valid search warrant did not warrant exclusion of seized drug evidence.
People v Stevens 460 Mich 626, 597 NW2d 53 (1999)

Prosecutor's Authorization

- Not necessary for Prosecutor to Authorize a Search Warrant *People v Mayes* 78 Mich App 618, 261 NW2d 22 (1977)

Penalties

Any person who maliciously and without probable cause procures a search warrant to be issued and executed shall be fined not more than \$1,000.00 or imprisoned not more than 1 year.
MCL 780.658

Checklist for Issuance of Search Warrant

1. Examine the affidavit and search warrant

*If the search warrant is issued over a fax,
have the affiant read the affidavit and
search warrant.*

Checklist for Issuance of a Search Warrant

2. Determine that the person, place, or thing to be searched is described with particularity.
3. Determine that the property to be seized is described with particularity.

Checklist for Issuance of a Search Warrant

4. Determine that the property is a proper subject for seizure.
5. Determine that the affidavit establishes probable cause to believe that the articles to be seized may be found in the place to be searched

Checklist for Issuance of a Search Warrant

6. If the affidavit is based on information supplied to the affiant by a *named person*, determine that the affidavit contains affirmative allegations from which the magistrate may conclude that the named person spoke with personal knowledge of the information.

If not, do the totality of the circumstances establish Probable Cause?

Checklist for Issuance of a Search Warrant

7. If the affidavit is based on information supplied to the affiant by an *unnamed person*, determine that the affidavit contains affirmative allegations from which the magistrate may conclude
 - that the named person spoke with personal knowledge of the information AND
 - That the unnamed person is credible OR that the information is reliable.

If not, do the totality of the circumstances establish Probable Cause?

Checklist for Issuance of a Search Warrant

8. Swear affiant

- Administer Oath
- Ask if averments in affidavit are true to best of affiant's information and belief
- Ask affiant to sign the affidavit.

9. Sign and date affidavit AND search warrant. If issued by fax, fax them to the affiant.

Checklist for Issuance of a Search Warrant

10. Retain original affidavit and original copy of search warrant.
11. Direct the police officer to leave a completed copy of the return to the search warrant at the place to be searched.
12. Ensure that a filled-out return to the search warrant is promptly filed with the court after the search warrant is executed.
13. Keep original in a secure non-public place.

Out Of State Warrants

Evaluation Form

Thank you for joining us today.

Please take a moment to complete
the on-line evaluation form by
clicking on the link below.

